

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HANI SALEH RASHID ABDULLAH, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 05-00023 (RWR)
)	
GEORGE W. BUSH, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	

REPLY IN SUPPORT OF MOTION TO MODIFY STAY

Having seized Petitioner Hani Abdullah’s property, including materials unquestionably protected by the attorney client privilege, Respondents now ask the Court to ratify their seizure, and to further bless an arrangement for future reading privileged matter.¹

¹ That Respondents seek relief before this Court shows that, despite their wish to keep the jurisdictional issue alive, they accept the holding by the Court in *Hamoud v. Bush*, No. 05-1894: the Supreme Court has indeed resolved the jurisdictional question in favor of this Court. Respondent’s belief to the contrary is not well founded. The assertion that Mr. Abdullah is seeking to challenge whether proper procedures were followed in his Combatant Status Review Tribunal (“CSRT”) – which seems to be the straw at which Respondents grasp – cannot survive examination of the petition, which makes no mention of the CSRTs whatsoever. This is hardly surprising; at the time the petition was filed, counsel had no access to the CSRT record, and did not even know what the result of the CSRT had been. Counsel has since learned that the CSRT “record” is replete with evidence obtained from Mr. Abdullah (and probably others) through torture. (Even if the conduct of the government somehow does not amount to torture as a matter of law, it very clearly violated common Article 3 of the Geneva Conventions.) Despite centuries of tradition, such evidence was admissible in CSRT proceedings. The illegality of such material is set out in detail in the opinion of the House of Lords in *A(FC) and Others v. Secretary of State for the Home Department*, No. [2005] UKHL 71, Dec. 8, 2005.

. . . from its very earliest days, the common law of England set its face firmly against the use of torture. Its rejection of this practice was indeed hailed as a distinguishing feature of the common law, the subject of proud claims by English jurists such as Sir John Fortescue (*De Laudibus Legum Angliae*, c. 1460-1470, ed S.B. Chrimes, (1942), Chap 22, pp 47-53), Sir Thomas Smith (*De Republica Anglorum*, ed L Alston, 1906, book 2, chap 24, pp 104-107), Sir Edward Coke (*Institutes of the Laws of England* (1644), Part III, Chap 2, pp 34- 36). Sir William Blackstone (*Commentaries on the Laws of England*, (1769) vol IV, chap

(continued...)

Respondents suggest establishment of a “filter” team to read privileged material, apparently hoping to disguise that they have *already* read privileged material. The Harris and Kisthardt declarations confirm that the attorney client privilege has already been flagrantly violated, not merely by seizure and impoundment of such material, but by the actual reading of privileged material not authorized by any court.

Careful examination of the facts asserted by Respondents shows no basis whatsoever for permitting the government to read Mr. Abdullah’s privileged mail. He has not been alleged to have taken part in a suicide pact or participated in any other wrongful activity. The facts alleged against other prisoners, with respect to pre-printed papers, do not apply to him. Second Declaration of Stephen M. Truitt ¶6, Exhibit A hereto. Indeed, Respondents sedulously avoid naming the few prisoners it suspected to have some involvement in the events under investigation, obviously because it wants to cast a wider net than justified by the facts. It is past time for Respondents to stop treating the petitioners, including Hani Abdullah, as an undifferentiated pack of dangerous killers. As the Supreme Court has made clear in its decisions in *Rasul v. Bush* and *Hamdan v. Rumsfeld*, the prisoners in custody in Guantanamo Bay are individual men with individual rights. Viewing Mr. Abdullah as an individual – the capacity in which he stands before this Court– it is inescapable that the relief the government seeks as to him can simply not be granted.

(continued...)

25, pp 320-321), and Sir James Stephen (*A History of the Criminal Law of England*, 1883, vol 1, p 222). (*Ibid* at 5.)

By no stretch of the imagination are Mr. Abdullah’s claims limited to arguments that the government did not follow its own procedures in the CSRT.

The correct way forward is a well worn path: if the government has some basis for seeking discovery of Hani Abdullah's papers, it can and should make a particularized request of his counsel to review and produce them. Counsel can review documents for privilege, and create a log for documents that meet the narrow criteria. If the government thinks a document is designated in error, it can make a motion for *in camera* review. Obviously, there are some logistical difficulties to overcome, but nearly all of them are of the government's own creation. In any event, even these can surely be resolved, perhaps with the assistance of Magistrate Judge Kay.

In no event, though, should the Court ratify the lawless actions taken by the government with respect to Mr. Abdullah, nor should it permit review of privileged material by anyone in advance of review by his counsel, and an order of this Court narrowly tailored to the circumstances.²

Respectfully submitted,

/s/ Stephen M. Truitt

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² In Petitioner's view, this Reply brief moots Respondents' request for expedited briefing. This matter is ripe for disposition.

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SECOND DECLARATION OF STEPHEN M. TRUITT

1. My name is Stephen M. Truitt an attorney for Hani Abdullah. I make this declaration on personal knowledge alone.

2. In the course of representing Mr. Abdullah I have reviewed every letter and communication made to him by Mr. Carpenter and myself, have been present throughout every meeting of counsel with Mr. Abdullah at Guantanamo, and have heard every word uttered by him at such meetings as translated by qualified interpreters. At these meetings Mr. Abdullah takes copious notes and also arrives with written questions and topics which he wishes to discuss with us. These are kept in the "legal materials" folder he maintains.

3. I have read the declarations of Harry B. Harris Jr. (undated) and of Carol Kisthardt dated July 7, 2006 both filed on July 7, 2006.

4. At no time have Mr. Carpenter or I ever communicated to Mr. Abdullah any advice, legal or otherwise, concerning the taking of his life or his participation in a hunger strike, or the tying of knots.

